

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,)
)
Plaintiff,) CR-14-00191-PHX-DGC (DKD)
)
vs.) Phoenix, Arizona
) September 3, 2014
Marc Turi and Turi Defense Group,)
) S E A L E D
Defendants.)
_____)

BEFORE: THE HONORABLE DAVID G. CAMPBELL, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

PRETRIAL CONFERENCE (SEALED)

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A P P E A R A N C E S

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P R O C E E D I N G S

THE COURTROOM DEPUTY: Criminal case 2014-191, United States of America versus Marc Turi and others, on for a conference.

MS. BROOK: Good afternoon, Your Honor. Kristen Brook and Will Mackie from the counterespionage section of the National Security Division on behalf the United States.

THE COURT: Good afternoon.

MR. CABOU: Good afternoon, Your Honor. Jay Cabou and Alex Samuels on behalf of the defendant. Also present with us is Mr. Turi.

THE COURT: All right. Good afternoon.

Good afternoon, Mr. Turi.

Let's talk just a minute about the motions that have been filed.

There's a motion to dismiss the indictment that was fully briefed as of yesterday when the reply brief was submitted. I have not had time to read the motion or the response or the reply.

There was a request for oral argument and expedited consideration that was made as part of the motion, I think by you, Mr. Cabou.

I am happy to hear your comments about it today if you want to do that, or if you think I should read it and then

14:05:33 1 we need to have oral argument, we can do that. I don't know
2 the basis for it because I haven't had time to read it yet.

3 Tell me what your thought is on what is needed with
4 respect to a hearing on that motion.

14:05:43 5 MR. CABOU: Your Honor --

6 THE COURT: Could you pull the mic right in front of
7 you.

8 MR. CABOU: Your Honor, we're happy to -- I guess we
9 requested oral argument in an effort to make sure that the
10 Court had a contemporaneous chance to have any of its
11 questions answered that weren't fully answered by the
12 briefing. But I don't think I want to take the Court's time
13 and government's time and just exposition on matters that have
14 been already briefed.

14:06:08 15 To the extent the Court would be helped by oral
16 argument, we're certainly happy to deliver it, but I don't
17 think we want to waste anyone's time making speeches. So I
18 leave that up to the Court.

19 THE COURT: All right. Okay.

14:06:18 20 How about from the government side?

21 MS. BROOK: The government concurs, Your Honor, if we
22 wanted to set that out for oral argument, if the Court so
23 desires.

24 THE COURT: Okay. I will read these briefs. If I
14:06:29 25 think we need oral argument, then I'll set it, and do it

14:06:32 1 fairly soon. This isn't going to drag out for months by any
2 means. We should get a decision on this out this the next two
3 or three weeks, I think. I think my schedule will allow that.
4 As I say, if I think there needs to be a hearing, I'll set it.

14:06:47 5 There's also a motion to strike surplusage that
6 doesn't request oral argument. The government has responded.
7 Do you intend to reply?

8 MR. CABOU: We do, Your Honor. We anticipate
9 submitting that reply probably tomorrow, as a matter of fact.
14:07:01 10 We're working quickly through them irrespective of the fact I
11 do have a few more days.

12 THE COURT: Okay. I think what I'll do, then, is
13 consider both of those motions at the same time and get you a
14 decision, unless I think we need to hold oral argument.

14:07:16 15 There's a motion to continue the trial date. I want
16 to come back to that after we talk about other matters in the
17 case.

18 There is a motion for leave to file excess pages
19 filed by the government at Docket 35. I'm going grant that.
14:07:33 20 That's for the response to the motion to dismiss. So we'll
21 just grant that. And then we'll deal with the motion to
22 continue the trial.

23 What I have done for today is I have read the motion
24 to set the hearing that we set for August 22nd, and I then had
14:07:51 25 to bump; I read the government's response; and I've read the

14:07:55 1 defendant's reply; and I've read the defendant's letter to the
2 government which makes discovery requests. I have also read
3 an ex parte filing that the government has made that you gave
4 notice of that I don't think is revealing any secrets to say
14:08:09 5 that you'll be seeking, potentially, some in-camera proceeding
6 as you're entitled to do under the CIPA Act. You'd give
7 notice of that anyway, as I understand it. And I've read the
8 statute. I've never dealt with this statute before. I
9 haven't read the case law that has to do with it.

14:08:32 10 And I think what we ought to talk about is what the
11 procedure ought to be to tee up for the decision I need to
12 make, whatever issues are arising under this statute.

13 It seems to me, just reading the statute, there's a
14 couple of different ways issues can come to the court, and I'm
14:08:53 15 inviting your comments on this because, as I say, I haven't
16 dealt with this before.

17 One is, obviously, the pretrial conference that is
18 authorized by Section 2, and it says the Court shall hold a
19 conference if it's requested, which is why I granted the
14:09:08 20 request. And to hold a conference for a few purposes: To
21 establish the timing of requests for discovery, the provision
22 of notice required by Section 5, that's the defense notice to
23 the government of classified materials that may be disclosed,
24 and, third, the initiation of the procedures established by
14:09:32 25 Section 6 of this act. Then it says I can go on and do some

14:09:39 1 other things as well.

2 Section 6 that it refers to, as I'm sure you all know
3 better than I, is a procedure -- or sets forth a procedure for
4 dealing with classified information. It provides for the
14:09:58 5 government to request a hearing under Section 6 to make all
6 determinations concerning the use, relevance, or admissibility
7 of classified information. It says any hearing held under
8 this subsection shall be held in camera if the Attorney
9 General provides a certificate. But, as I read that in-camera
14:10:25 10 provision, that does not mean ex parte, it means without the
11 public participating. Because later it talks about in camera
12 and ex parte with respect to another provision. Of course
13 there is notice requirements.

14 If information is to be disclosed, it gives the
14:10:44 15 government alternatives for how disclosures can occur by
16 either stipulating to facts or providing summaries if they're
17 sufficient.

18 So there's this Section 6 procedure which, by my
19 reading, the hearing is at the request of the government, but
14:10:59 20 maybe case law has said defendants can prompt one, I don't
21 know.

22 Then there is Section 4 that says that I can
23 authorize the government to delete specified items of
24 classified information, substitute a summary, substitute
14:11:25 25 statements of fact; that I can do this by permitting the

14:11:33 1 government to make a record for such authorization in the form
2 of a written statement to be inspected by the Court alone.
3 And then it says if the Court enters an order granting relief
4 following such an ex parte showing, a record will be created.

14:11:48 5 So this seems to authorize ex parte proceedings that
6 the defendant wouldn't be a part of; this would be me
7 reviewing whatever the government submits and asks to be
8 either redacted or handled in some other manner.

9 There is, obviously, the Section 5 notice. I don't
14:12:11 10 even know if that's going to be relevant at the this point.
11 Mr. Cabou, I don't know if you have or think you will obtain,
12 other than from the government, any classified information
13 that you would need to give notice of. Are you prepared to
14 address that in any way today?

14:12:27 15 MR. CABOU: Your Honor, we have no classified
16 information. We have information, as we've said to the Court,
17 that may potentially be classifiable, but certainly we don't
18 have any classified information, and we've been very open
19 about that.

14:12:38 20 We believe, as Your Honor suggested, that there's
21 classified information that is discoverable and, with that in
22 mind, brought us to this point.

23 THE COURT: Right.

24 Those seem to be, to me, the most relevant portions
14:12:57 25 of the act, at least upon a novice's reading of the statute.

14:13:02 1 I've seen the letter, as I said, that you wrote,
2 Mr. Cabou, to the prosecution outlining general categories of
3 information you think you're entitled to.

4 You were the one who requested the hearing. Tell me
14:13:14 5 what it is you think I should do as a result of this hearing
6 to help the case move along.

7 MR. CABOU: Thank you, Your Honor.

8 Put simply, we understand and respect the
9 government's concerns that classified information not be
14:13:31 10 disclosed more broadly than it needs to be and that reasonable
11 secrecy surround those disclosures. But as we tried to work
12 out informally with the government the process to appoint a
13 court security officer, establish a SCIF where we can review
14 information, that kind of got bogged down in the informal
14:13:53 15 efforts, and as part of that, today's conference, we would
16 like the Court to order the appointment of a court security
17 officer so we can begin the process of issuing needed
18 clearances to myself, Mr. Samuels, and a limited number of
19 staff in our office who will be assisting us in defense of
14:14:09 20 this case.

21 In terms of what else might need to happen at this
22 point, we have not moved to compel formally on the
23 government's decision not to produce classified information.

24 I'm not sure we need to do that, but if the
14:14:28 25 government's position continues to be that it will not

14:14:31 1 disclose any of the information requested in our August 6th
2 letter or other information we intend to request subsequently
3 on the ground they're not disclosing any classified
4 information, then we would anticipate a motion to compel the
14:14:44 5 disclosure of that information subject to court security
6 procedures and subject CIPA.

7 THE COURT: What is it that you understand the role
8 of a court security officer to be?

9 MR. CABOU: Your Honor, I confess this is my
14:14:57 10 inaugural CIPA case, as it is yours. My understanding comes
11 from some conversations with lawyers who have litigated these
12 cases before and studying procedures that are available. I'm
13 sure the government could fill us in a little bit more. But
14 my understanding is a court security officer is a person who
14:15:14 15 works for DOJ who works for the court, essentially, who would
16 administer the vetting and clearing of defense counsel and
17 staff for getting the requisite clearances to examine
18 classified information that is disclosed or ordered to be
19 disclosed. But I would certainly invite Mr. Mackie or
14:15:34 20 Ms. Brook's comments on that. I don't pretend to be the
21 expert on that.

22 THE COURT: You refer to a SCIF. What's that?

23 MR. CABOU: I'm going to fail on the acronym, but
24 it's a secured computer facility where you can examine
14:15:48 25 documents. Usually they erect them at the courthouse and the

14:15:51 1 U.S. Attorney's Office so they're not sending classified
2 information to private attorneys' offices.

3 THE COURT: Well, the appointment, as you understand
4 it, of a court security officer or the setting up of this
14:16:02 5 review procedure would depend upon whether or not classified
6 information is actually going to be produced in the case,
7 right?

8 MR. CABOU: Yes, Your Honor.

9 THE COURT: So it would seem that if -- and we'll
14:16:14 10 hear from the government attorneys in a minute -- if their
11 position is there's no classified information that needs to be
12 disclosed in this case, if I were to agree with them after
13 whatever appropriate procedures are needed to hear from
14 everybody, there wouldn't be a need to appoint a court
14:16:35 15 security officer or set up a SCIF. Do you agree with that?

16 MR. CABOU: I believe I do. If there's no classified
17 information, we don't need security procedures that attach to
18 disclosure of that information.

19 THE COURT: Okay. I know you're contending you're
14:16:48 20 entitled to it, but I just want to think through this in terms
21 of the order in which we ought to address these issues.

22 Okay. Thank you.

23 Either one of you are welcome to speak on these
24 issues. I didn't write down your name.

14:17:01 25 MR. MACKIE: Your Honor, it's William Mackie,

14:17:03 1 M-A-C-K-I-E.

2 THE COURT: M-A-C-K-I-E?

3 MR. MACKIE: Correct, yes, sir.

4 THE COURT: Are you out here from DC?

14:17:12 5 MR. MACKIE: Yes, I'm with National Security
6 Division.

7 THE COURT: Welcome to Arizona in the summer.

8 MR. MACKIE: It couldn't be better. Makes DC heat
9 feel like nothing.

14:17:23 10 Your Honor wishes me to stand here as opposed to the
11 podium?

12 THE COURT: You're fine there; you can come to the
13 podium if you want to. Either one is all right.

14 MR. MACKIE: It is an honor, Your Honor, to be in
14:17:32 15 your court today.

16 I'd like to address, I think, before we get into the
17 procedural issues, which I think the Court did appropriately
18 state that that's a bridge you cross once you decide you're
19 crossing the bridge. But before that, what we would say, Your
14:17:51 20 Honor, is if -- as the Court has referred to the defendant's
21 letter that was August 6, 2014, requesting classified
22 discovery, we would pose to the Court that this is really a
23 Rule 16 question. And it's unlike -- well, let me rephrase
24 that. It is just like any other case I've done in my years
14:18:23 25 and the Court has done for many years from the bench. CIPA

14:18:31 1 relates only to how to handle classified information in the
2 context, essentially, of Rule 16. And as the defendant has
3 filed in the motion and which I would cite that famous case *US*
4 *v. Libby*, CIPA is implicated only after the Court has resolved
14:18:50 5 the question of materiality.

6 So what the government would submit is that the first
7 question the Court has to address is, is in fact discovery
8 there?

9 The defendant has, I think appropriately, noted that
14:19:08 10 they're not making this Section 5 request, which is basically
11 saying we have classified information that we want to use and
12 we're giving notice of it and the government can respond. But
13 that's not an issue here.

14 So what is before the Court is a discovery request,
14:19:28 15 not a specific piece of information that the defendant cites
16 that they want to use. So, as the Court noted, in Section 2,
17 the pretrial conference, matters of discovery, Section 5
18 notice, that's not at issue here. Section 6 notice, the
19 government saying we don't want the defendant to use this
14:19:54 20 information, that's not an issue here.

21 So essentially we're at the posture here of a
22 discovery hearing, to which we would say that the defendants
23 initial discovery letter of July 30th, 2014, which I would
24 certainly say covers the waterfront, seven pages, the
14:20:19 25 government has produced 7,000-plus pages of discovery. And in

14:20:28 1 the discovery request, the first one, it asks for,
2 essentially, *Brady* material and Rule 16 material for all
3 government agencies. We would submit to Court, as we've said
4 in our pleadings, we have. We have provided everything that
14:20:48 5 relates to this case, to the indictment.

6 When we turn to the second discovery request, which
7 the Court has reviewed --

8 THE COURT: That's the August 6th letter?

9 MR. MACKIE: August 6.

14:21:04 10 We would state that this is no different than any
11 other case that comes before this court where the first
12 question is, is any of these requests relevant or material to
13 the charges in the indictment?

14 And the government states two things: One, we've
14:21:29 15 provided everything: every defendant statement that is in the
16 government's possession, from any agencies, that relates to
17 this case; documents that we'd use in our case in chief; or
18 anything that would be material to the government -- to the
19 defense.

14:21:46 20 When we look at the August 6 letter, we say,
21 assuming, again, this is just what we're talking about,
22 Rule 16, we would say what the defendant is asking for here
23 is, to use an old phrase, a rather overbroad fishing
24 expedition. It's asking for records relating to all persons,
14:22:13 25 any entities, relating to six countries -- which relates to

14:22:25 1 Libya, Syria, Qatar, United Arab Emirates, Turkey, and
2 Jordan -- the time period from 2010 to 2014, relating to all
3 transactions, procurements, acquisitions of defense articles,
4 which is defined under the ITAR. Let's just say any kind of
14:22:51 5 weapons, that sort of stuff, of any kind, under any
6 circumstance.

7 That has absolutely, we would say, no bearing on this
8 case.

9 So our position is that we have provided all the
14:23:07 10 discovery, fully cognizant of *Brady*, *Giglio*, *Wheatley*, all the
11 line of cases, Rule 16, that relate to this.

12 What the defendant, I believe, is seeking is a,
13 really, very much open-ended disclosure of information
14 relating to not himself but other people. Relating to other
14:23:35 15 countries, other transactions, other entities, which we submit
16 has no bearing. Not even a scintilla of relevance to what is
17 charged.

18 So our position is there is no discovery that we're
19 withholding; that the discovery that we have already presented
14:23:57 20 encompasses, just like any other case, everything that we in
21 good faith, submit to the Court, believe falls under Rule 16
22 and *Brady*, *Giglio*.

23 And our response, in a sense, to the August 6th
24 letter is we, under any circumstance, whether it's CIPA or
14:24:18 25 not, let's say, is all unclassified, that is something we

14:24:22 1 would say is just not in any way relevant and material to this
2 case. What other people did in other countries under other
3 circumstances has no bearing.

4 And I would, in a sense, analogize it to a narcotics
14:24:41 5 trafficking case. Somebody says, "I was targeted, so I want
6 the government to provide records for the last four years of
7 every narcotics investigation you did relating to any person
8 in six different countries so that I can show that it's
9 vindictive prosecution because I was treated differently than
14:25:05 10 the way they were treated."

11 To which we would say, "We don't believe that's
12 relevant or material to your case."

13 I believe that's a similar posture we're in now.

14 So in summarizing, we believe we have provided
14:25:22 15 everything, cognizant of Rule 16, *Giglio*, *Brady*, *Wheatley*, all
16 that, provided the defendant. We are not withholding anything
17 bearing on this case because we believe it's classified. In
18 which case we would have filed a motion. Such as a
19 defendant's statement relating to what's the charges in the
14:25:43 20 indictment. That's an instance where we say, hmm, that is a
21 Rule 16, but it's classified, so for us to be able to provide
22 it to them we either have to basically go through procedure to
23 get them qualified so they can handle classified information
24 or, if we believe it's not something that should be disclosed,
14:26:07 25 we would file a motion under that procedure. But that's not

14:26:11 1 the case here.

2 So what we're trying to underscore to the Court is
3 it's not a question where we're trying to withhold
4 information. What our posture is to begin with is that what
14:26:27 5 is being asked for in the August 6th letter has no relevance,
6 no materiality.

7 We can, out of abundance of caution, as we filed
8 earlier, file a motion under Section 4 which outlines the
9 specifics of any actions that the government may have
14:26:55 10 undertaken or may not have undertaken that relate to the
11 defendant's situation to show why it's not relevant.

12 But before even we get to that posture, I would
13 suggest to the Court that defendant needs to have at least a
14 minimal showing of relevance how transactions involving other
14:27:25 15 people, other places, other times, other transactions that
16 have no bearing on the defendant, has any relevance.

17 So in a sense, before we even cross that bridge, my
18 suggestion to the Court is that the defendant's the movant
19 and, as we've stated, as we just said right here, we don't
14:27:47 20 believe that these recent Article 6 requests have any bearing
21 or relevance or materiality to the charges at hand in the
22 indictment.

23 THE COURT: Well, assuming, Mr. Mackie, there's a
24 disagreement between you and the defense on whether or not the
14:28:07 25 categories of information identified in the August 6th letter

14:28:11 1 are discoverable under Rule 16, how do you propose that that
2 dispute be resolved?

3 MR. MACKIE: I would propose that the Court rule on
4 it as it would any Rule 16. The letter here that -- this is,
14:28:26 5 in a sense, not classified, is before the Court, and I would
6 say if this was -- well, it is. I mean, right now, the
7 filings are sealed, but if we, you know, move to unseal it,
8 but let's just say the Court knows what this letter requests.
9 What we would say to the Court is, just like in any other
14:28:52 10 case, the Court would look at this and say, "I think this has
11 some relevancy." Or doesn't. If the Court finds it has
12 relevancy or it may have a bearing on the materiality to the
13 defense, which I would note under the 12.3 notice that the
14 defendants filed, I would suggest to the Court that the topics
14:29:22 15 in the August 6th letter has no bearing on that. It's other
16 people, other places, other things.

17 THE COURT: What is the 12.3 notice?

18 MR. MACKIE: That is the notice of public authority.

19 So let's say the defendant says Government Agency 1,
14:29:39 20 2, and 3 authorized me to do what I did, so that's my defense.
21 Said, yeah, I did what I did, but Agency 1, 2, and 3 told me
22 to do it, or I thought it was okay.

23 Assuming that for purposes of argument that that's
24 his public authority defense which he has filed, I suggest to
14:30:06 25 the Court that these three categories -- I mentioned the first

14:30:11 1 one, which was six different countries, all different people,
2 there's also all prior approval requests. Approvals and
3 denials for brokering for anybody for six countries from 2010
4 to anybody. Anybody that had a brokering license the last
14:30:33 5 four years relating to those six countries and all the
6 licenses that were granted.

7 So basically there's four categories. There's, you
8 know, all the transactions with these six countries -- oh, I
9 forgot to mention anything possible or contemplated
14:30:55 10 involvement or involvement that the United States may have had
11 with any transactions relating to the United States Security
12 Council Resolution 1973.

13 What we submit to the Court is that if we look at
14 those things and we look at the August 6th discovery request,
14:31:20 15 those two aren't even the same, and so -- what the public
16 authority does has nothing to do with who told me to do this.
17 It's I want to know what everyone else did.

18 And so what we would suggest to the Court is that the
19 first finding the Court needs to find, is there any -- has it
14:31:44 20 met the threshold of relevance under Rule 16.

21 THE COURT: All right. Thank you.

22 Mr. Cabou, it seems clear that the government is of
23 the view that the categories of information you sought in your
24 August 6th letter is not subject to discovery under Rule 16.
14:32:07 25 How do you propose that we resolve that dispute?

14:32:11 1 MR. CABOU: Well, Your Honor, admittedly the
2 procedure that we're here on, this notice, got a little bit
3 unwieldy and unfamiliar to us all. We believe it is relevant
4 under Rule 16, and we outlined some of those reasons both in
14:32:23 5 the letter itself and in the reply in support of our motion to
6 set this conference. And also I would note, you know,
7 reference those -- that standard in our 12.3 notice. The
8 government --

9 THE COURT: Let me interrupt again.

14:32:38 10 MR. CABOU: Sorry.

11 THE COURT: I have not seen the 12.3 notice --

12 MR. CABOU: I have a copy --

13 THE COURT: -- was it filed?

14 MR. CABOU: It was, Your honor. It was filed August
14:32:46 15 11th.

16 THE COURT: What's the docket number?

17 MR. CABOU: You know, I don't know, it doesn't have a
18 ECF stamp on it.

19 THE COURT: That's okay, we'll find it with the date.
14:32:53 20 Traci can print it. It's just not one of the things I looked
21 at before today. But go ahead with what you were saying.

22 MR. CABOU: I apologize, Your Honor.

23 MR. MACKIE: It's fairly brief if the Court wants to
24 read it.

14:33:01 25 THE COURT: Actually, let me get it from Traci so

14:33:03 1 it's got the docket number on it. That will help me keep my
2 materials organized. But thank you.

3 Go ahead, Mr. Cabou.

4 MR. CABOU: Very simply, Your Honor, the notice
14:33:13 5 discloses kind of our intent to pursue a defense along the
6 lines which Mr. Mackie alluded to, that Mr. Turi acted on
7 behalf of agencies of the United States government. He acted
8 with public authority. And in proving that, we are entitled
9 to discover relevant information; things that make it more
14:33:31 10 probable that he did that. And, if, for example, Mr. Turi did
11 things the way they are simply done in the business of
12 clandestine arms traffic-- -- clandestine arms procurement, a
13 business that he's licensed to conduct, a business he has
14 conducted on behalf of the United States government before,
14:33:49 15 then the way in which it is done is relevant.

16 We're not required to prove our case based only on
17 the information the government needs to prove its case. Our
18 burden to carry an affirmative defense in this case and to
19 show public authority, that's on us. But we're certainly
14:34:08 20 required -- we're allowed to, and the law requires, that we be
21 given access to the information we need to prove that to be
22 true. And to the extent that Mr. Mackie alluded a few moments
23 ago to the fact that the government is avowing to the Court
24 and to counsel that it has produced everything that is
14:34:26 25 relevant to the indictment, maybe. Let's take that at face

14:34:30 1 value. But that's not the standard. The question is relevant
2 to the defense.

3 Our defense, as we kind of laid out in the notice and
4 at some pains to explain in the reply, is firmly rooted in
14:34:44 5 facts that are of public knowledge.

6 Mr. Turi attached to the reply, and we hadn't
7 attached this to the motion itself in an effort to keep the
8 documents to a minimum, I believe it's Exhibit B to the reply,
9 is -- it's not Exhibit B. Sorry. Exhibit C to the reply --
14:35:04 10 is an e-mail exchange between Mr. Turi and former United
11 States ambassador to Libya, who was tragically assassinated in
12 Benghazi, Chris Stevens.

13 Now, it's true that information itself is not
14 classified because the government chose not to classify it.

14:35:21 15 But the government perhaps could have, I don't know. But I
16 will tell you that in that response e-mail from Ambassador
17 Chris Stevens, which is dated Thursday, April 7, 2011, in
18 other words right in the heart of the relevant period,
19 Ambassador Stevens' response to Mr. Turi responds to a
14:35:40 20 detailed discussion of arms transactions and says to Mr. Turi,
21 "Dear Sir, thank you for this information. I'll keep it in
22 mind and share it with my colleagues in Washington. Regards,
23 Chris Stevens."

24 Now, we would like to know what information was
14:35:56 25 shared? Was there a diplomatic cable? Were there memoranda?

14:36:00 1 Were there e-mails?

2 It seems quite clear that the government doesn't
3 think that those materials relate to the indictment. The
4 government would have the Court and the defense believe that
14:36:08 5 this is a simple case: There's two pieces of paper and they
6 say what they say about where the arms were supposedly going
7 and they say things that aren't true and that's it.

8 This is not that case. It's not.

9 What it is, is a case of public authority. We are
14:36:25 10 entitled to discover both things that are relevant to the
11 particular transactions at issue here, which relate not only
12 to things Mr. Turi might be a party to, but also to things
13 that went on in Libya.

14 There are high-ranking members of the United States
14:36:42 15 government at the ambassador level, one of our own senators,
16 Senator McCain, is publicly quoted as saying the United States
17 provided arms to Libya. We would like to know how that
18 happened. Because if it happened pursuant to a deal in which
19 end user certificates didn't say Libya, that is awfully
14:37:01 20 relevant to what we're doing here.

21 If it happened in a way that didn't allow the general
22 public to discover that the United States, through clandestine
23 means, was transacting foreign policy, we're entitled to
24 discover that. Because it certainly makes Mr. Turi's claim
14:37:16 25 that he was acting under public authority a lot more true. It

14:37:20 1 certainly tends to support his claim that --

2 THE COURT: Well, you're arguing the merits now,
3 Mr. Cabou.

4 MR. CABOU: I apologize --

14:37:25 5 THE COURT: That's all right. Both sides -- it's
6 wise to acquaint me with the issues. But the question that is
7 most relevant, in my view, is what do you think is the
8 procedure for me to decide that? I don't want to decide it on
9 the basis of what you both said here today because my
14:37:40 10 knowledge is superficial.

11 MR. CABOU: Your Honor, I guess -- I'm sorry, was
12 Your Honor finished?

13 THE COURT: Go ahead.

14 MR. CABOU: To that extent, the original request was
14:37:49 15 over a month ago and some time has gone by. I think we're in
16 agreement the relevant standard is Rule 16, and it doesn't
17 change just because some of the information is covered by
18 CIPA, we would say, and some information is not relevant under
19 Rule 16, the government would say.

14:38:05 20 And I suppose what might make sense at this point is
21 to have some type of expedite briefing, you know, that just is
22 tightly focused on the Rule 16 standards for this information.
23 Rule 16 was kind of alluded to and certainly cited in the
24 papers you have, but it's not technically a motion to compel,
14:38:22 25 and we certainly recognize that.

14:38:24 1 Our purpose to seeking a conference at an earlier
2 moment was to keep things moving. Frankly, Mr. Turi is in a
3 situation where he's inclined to exercise his right to as
4 speedy a trial as possible. But he's also stymied by the fact
14:38:38 5 he doesn't have a need. To the extent the procedure has
6 evolved a little bit now with the passage of a month or so, if
7 Your Honor would perhaps like us to brief the issue of, you
8 know, in the form of a motion to compel the discovery sought
9 by the August 6th letter, give the government a chance to
14:38:54 10 reply -- respond, we can do that. That seems like a pretty
11 orderly way to have it happen.

12 I would note that we are torn between Mr. Turi
13 wanting to proceed quickly and expeditiously to trial and to
14 clear his name, which, you know, the tarnishing of which has
14:39:13 15 come at significant personal, financial, and business costs to
16 him. And also our commitment to get the information we need.
17 So we're torn on that, candidly. But certainly Your Honor
18 raises very valid points about the need to kind of brief this
19 in an orderly fashion.

14:39:26 20 The government alluded I think in writing to the fact
21 that if Your Honor orders classified information to be
22 disclosed, they intended to take an interlocutory appeal.

23 It seems like given that posture, everyone in the
24 long run, including the circuit, might benefit from having
14:39:42 25 this teed up in a more formal fashion. If that's how Your

14:39:45 1 Honor wants to proceed, we're certainly happy to proceed along
2 those lines.

3 THE COURT: Let me ask you another question,
4 Mr. Cabou. You mentioned in your discussion a minute ago a
14:39:54 5 specific category of documents you think are relevant, which
6 would be things Ambassador Stevens passed along regarding the
7 information provided by Mr. Turi. Where would you say that is
8 covered in your August 6th letter and the various categories
9 of documents you request?

14:40:13 10 MR. CABOU: I would say that's in Category 1, Your
11 Honor: Documents or evidence relating to instances in which
12 the United States assisted or considered assisting in any way,
13 overtly or covertly, in the transportation -- it's on page 3
14 of Exhibit A to the motion, which is Category 1, which are
14:40:34 15 documents or other evidence relating to instances in which the
16 United States assisted or considered assisting in any way,
17 overtly or covertly, in the transportation, provision,
18 acquisition, transfer, or transport of defense articles to or
19 from any person, entity, group of people, quasi-governmental
14:40:58 20 entity, or government within the territory of Libya, Syria,
21 Qatar, United Arab Emirates, Turkey, or Jordan, open paren,
22 these countries collectively herein, the, quote, covered
23 countries, unquote, close paren.

24 THE COURT: Well, I think we should get this issue
14:41:26 25 teed up in the form of a motion to compel that is briefed and

14:41:30 1 figure out an expeditious way to do that. That way we've got
2 a formal motion that I'm ruling on.

3 Here's an issue I want to raise for both sides to
4 think about when we brief that motion. As I understand it,
14:41:49 5 the provision under which the defense is seeking this
6 information is Rule 16(a)(1)(E)(i), which is the rule that
7 requires the government to disclose an item material to
8 preparing the defense.

9 It's well established in the Ninth Circuit to get
14:42:13 10 discovery under that rule the defense needs to make a
11 threshold showing of materiality. It's just not something you
12 can ask for, you have to affirmatively make a threshold
13 showing of materiality.

14 The case law I've reviewed in the past and that I
14:42:31 15 have relied upon in other cases says a couple of things, and
16 I'm going from memory here, I haven't gone back and reread the
17 cases. But I think it says the requests have to be specific
18 because as to the information requested, the defense has to
19 make a showing of materiality. So very broad requests
14:42:52 20 virtually always fail the test because it's impossible for a
21 Court to tell which of 100 or 1000 items within that very
22 broad request meet the threshold showing of materiality from
23 the defense.

24 The second thing I think the Ninth Circuit has
14:43:08 25 required is that the defense must come forward with facts

14:43:13 1 which tend to show that the information in the possession of
2 the government would be helpful to the defense.

3 One of my concerns when I looked at the August 6th
4 letter is some of those categories are very broad and I think
14:43:27 5 I would have a difficulty finding materiality for everything
6 within that category based on the kind of argument you just
7 made, Mr. Cabou. There may be specific things where I think
8 you've shown materiality, but when you're asking for all
9 communications related to transactions with six countries,
14:43:46 10 undoubtedly my instinct would tell me there's stuff in there
11 that isn't material to this case, and if we're talking about a
12 broad category, I cannot say you've made the materiality
13 showing.

14 The reason I'm saying that is because I'm wondering
14:44:01 15 if, before we file a motion to compel, there should be another
16 back and forth where you -- and maybe this is as precise as
17 you think you need to be, Mr. Cabou, but where you narrow the
18 request, if you can, to the specific information on which you
19 think you can make a showing of materiality. The government
14:44:19 20 can respond. If they think it's not material, you can then
21 file your motion to compel, but at least we've focused the
22 discussion in a way that I think the Ninth Circuit will allow
23 me to rule on.

24 If it's just dealing with these very broad
14:44:32 25 categories, I think we're going to get there, I'll probably

14:44:36 1 deny it, and then we'll have to go through what I just
2 described, which is you giving a more specific request to
3 which they can respond.

4 And I say that in light of the materiality showing
14:44:46 5 that I think Ninth Circuit law requires.

6 I know you've quoted in your reply a statement by
7 Judge Berzon that Rule 16 discovery is very broad. And I --
8 she's on the Ninth Circuit, she's my boss, but I'll tell you
9 most of the Ninth Circuit cases, in my view, don't take that
14:45:03 10 view. It's not like civil discovery. It is limited discovery
11 under Rule 16, and under this rule it requires the affirmative
12 materiality showing from the defense before they're entitled
13 to the information on Rule 16(a)(1)(E)(i).

14 MR. CABOU: Your Honor, on that point, and we're
14:45:21 15 certainly happy to take the Court's direction, I think that's
16 a good suggestion. The letter was, you know, written in an
17 attempt to engage in a dialogue. That's taken us to kind of
18 come here and get ourselves focused, that's certainly fine,
19 and we'll send another letter and will go from there.

14:45:39 20 I would just note on the issue of Judge Berzon and
21 the standard, I think it's very important to keep in mind, and
22 Mr. Mackie's comments kind of teed this up, he said, look,
23 this is like a drug conspiracy case or trafficking case where
24 they say I was vindictively prosecuted. This is not. In a
14:45:58 25 vindictive prosecution case, that's a motion that's made as a

14:46:01 1 matter of law and motion to dismiss. This is about us needing
2 facts to prove at trial an affirmative defense. And we
3 strongly believe that under those circumstances we're entitled
4 to as broad a discovery as Rule 16 has ever allowed. We're
14:46:16 5 fighting an enormously uphill battle.

6 Mr. Turi, who is a licensed dealer, was acting at the
7 behest of the government. It is now that same government that
8 is prosecuting him for doing things he was asked to do. We
9 have got to have their cooperation in this unusual
14:46:32 10 circumstance. We've got to have access to the materials that
11 will prove that to be true. And I think just to foreshadow a
12 little bit about what you might see in some of our discussion
13 in the motion, we will be very focused on the things we need
14 to establish that this is how the government does business,
14:46:48 15 that Mr. Turi is in this business, that this is what happened
16 in this case, and those are all what we need to make out this
17 affirmative defense.

18 Mr. Turi has an enormous task ahead of him, and we
19 alongside him. And, you know, we -- I don't think we need to
14:47:03 20 rehash this, but we're not on a fishing expedition. We need
21 what we need to prove his innocence. Period. I have no --
22 I'm sorry.

23 THE COURT: Well, I understand the point you're
24 making. The reason that I said what I did about Rule 16 is
14:47:17 25 that I don't think it's like civil litigation where you can

14:47:22 1 seek discovery of any matter relevant to a claim or defense as
2 Rule 26(b)(1) allows on the civil side. There's a materiality
3 requirement, and it requires a showing from the defense. So I
4 said that so that you would focus.

14:47:35 5 MR. CABOU: Understood.

6 THE COURT: Because I think if you're doing it with
7 respect to a very broad request, the case law says it fails.
8 I think there are a dozen Ninth Circuit cases that say very
9 broad requests fail.

14:47:46 10 But the focus in your explaining to me why it is
11 material to the defense is exactly the kind of information I
12 need to make the Rule 16(a)(1)(E) determination.

13 So I understand why you think it's essential, but I'm
14 just -- my view is I can't broaden Rule 16(a)(1)(E)(1) because
14:48:08 15 I think it would be helpful in a particular case to broaden
16 it. I think I still have to apply that materiality threshold
17 that you have to satisfy before I order discovery.

18 MR. CABOU: Thank you. Thank you, Your Honor.

19 THE COURT: Mr. Mackie, were you going to --

14:48:24 20 MR. MACKIE: Yes. I do not want to plow over old
21 ground, so I want to focus just on one thing, which in the
22 government -- excuse me, the Court's focus on this I think
23 it's moving in the right direction in terms of -- which we
24 want. I want to say to begin with, I believe the defendant is
14:48:41 25 making these requests in good faith. I don't believe it has

14:48:44 1 anything to do with trying to, you know, shake down the
2 government or anything. I mean, I think we're trying to move
3 in the right direction on here. The difference is the
4 statement here that Mr. Turi was acting at the behest of the
14:48:59 5 government and the government must have material that's
6 relevant. What we're saying is if we had that, we would have
7 given it to them. But if the government didn't -- if he
8 didn't -- if he wasn't acting in government's behest, I'm not
9 talking about the facts, I'm just saying if there was
14:49:15 10 something we had relevant to that, we would have provided it.
11 We do not.

12 THE COURT: And I appreciate that statement. This,
13 to me, is another reason why we need to be specific.

14 MR. MACKIE: And I would just say how the government
14:49:25 15 does business, right, to somebody else that's unknown to the
16 defendant, what we're saying, is whether somebody else did it,
17 of which was unknown to him, we would say is our position says
18 no materiality.

19 THE COURT: Well, that's an issue I'll need to
14:49:43 20 decide. I'll need to get briefing from the parties on the
21 public authority defense and how it's proven.

22 Well, it seems to me what we ought to do is set a
23 schedule for these things to happen. And I think the first
24 step is for the defense to get a renewed Rule 16 letter to the
14:49:59 25 government.

14:50:05 1 How soon do you want to do that or can you do that,
2 Mr. Cabou?

3 MR. CABOU: Your Honor --

4 THE COURT: And let me just say, I really would like
14:50:11 5 it to be as specific as possible, otherwise I fear we do this
6 twice. I just want to make sure we do it once.

7 MR. CABOU: I think that we -- it's in our interest
8 to do it as quickly as possible. We will certainly have it,
9 you know, e-mailed to counsel for the government by Monday.
14:50:26 10 We will shoot for before then. But I think that's the fastest
11 we can really be addressing these issues in light of some
12 other things.

13 THE COURT: All right.

14 Mr. Mackie, in the interest of moving this along, if
14:50:38 15 you get their renewed, narrowed Rule 16 request on Monday,
16 when can you respond to it?

17 MR. MACKIE: I believe, I think, within seven working
18 days.

19 THE COURT: Okay. So that will be -- the letter will
14:50:59 20 go, then, by September 8; the government will respond by
21 September 15.

22 MR. MACKIE: We may well be able to do it earlier
23 than that.

24 THE COURT: That's fine.

14:51:09 25 Assuming you get the response back from the

14:51:11 1 government on the 15th and assuming hypothetically it says
2 they're not giving you everything you asked for, when will you
3 be prepared to file your motion to compel?

4 MR. CABOU: Your Honor, if Mr. Samuels and I are
14:51:29 5 calculating the calendar right, the 15th is a Monday. Our
6 goal would be to do it by that Friday, but no later than the
7 Monday.

8 THE COURT: Okay. Then let's say the next Monday,
9 the 22nd, will be the motion.

14:51:43 10 In the motion, I know you would probably do this
11 anyway, but if you disagree with my description of the
12 materiality requirement, point that out. Because I want to
13 make sure I'm applying the correct Ninth Circuit law. As I
14 said, I haven't gone back and revisited it for purposes of
14:51:58 15 this hearing. But that will be the test, to me.

16 This is going to be -- I'm assuming, incidentally,
17 that this isn't a *Brady* issue, this isn't a matter -- you'll
18 include *Brady* in your request, but I'm assuming the government
19 knows it has an obligation to do an independent *Brady* search.
14:52:20 20 Whether or not that becomes an issue, the government may raise
21 later, if they want me to review *Brady* information, which
22 happens.

23 But I think we all know what the *Brady* standard is.
24 I think it's going to be real important in your motion to
14:52:34 25 explain why you think the request satisfies Rule

14:52:36 1 16(a)(1)(E)(1). And in the process, I think I'm going to need
2 to understand, and maybe it's laid out clearly enough in the
3 12.3 notice, but I'm going to need to understand the theory of
4 the defense and why this information, to the extent you want
14:52:56 5 to reveal your defense thinking now, is material to the
6 defense you want to make out. That's the context in which I
7 need to make the decision.

8 MR. CABOU: Yes, Your Honor. We -- again, the rule
9 requires us to provide affirmatively, basically, that
14:53:10 10 information. We provided what we have to date. We would
11 anticipate, hopefully, we will get additional information by
12 which we can then provide further information.

13 I don't think it's a secret from the government. The
14 government has very experienced lawyers and they've been at
14:53:23 15 this case a long time and in this area a long time. So I
16 don't think it's a secret where the defense is going at this
17 point. So our interest is in getting the information, having
18 it out there. There's no punches to pull at this point.

19 THE COURT: When you address that, please address --
14:53:37 20 you don't have to do it separately, but make sure you address
21 both of the categories of violations alleged in the
22 indictment.

23 As I understand it, two of the counts go to violation
24 of the Arms Export Control Act, two go to false statements.
14:53:55 25 Please be specific if information is relevant to all of those

14:53:58 1 counts or relevant to one category or the other. That will
2 help me in focusing my thinking.

3 All right. So, Mr. Mackie and Ms. Brook, if you get
4 the motion by the 22nd, when can you file a response?

14:54:19 5 MR. MACKIE: We would take the standard ten days, but
6 we will try to expedite that as I think we both would like to
7 move this case toward conclusion, whether it be trial or
8 otherwise. But give us ten days and we will make our best
9 effort --

14:54:37 10 THE COURT: Let's say October 3rd, which will be
11 ten -- well, we're now talking ten days. It's really become
12 14 days since the rule amendments, but we'll give you ten
13 weekdays. We'll make it October 3rd.

14 MR. MACKIE: That would be fine.

14:54:52 15 THE COURT: And your reply?

16 MR. CABOU: Let me just consult with Mr. Samuels for
17 a moment on his trial schedule.

18 THE COURT: Go ahead.

19 MR. SAMUELS: Is October 3rd a Friday, Your Honor?

14:55:15 20 THE COURT: Yes.

21 MR. CABOU: I think we will reply in support of an
22 anticipated motion to compel by the 10th, which would be the
23 next -- one week. So that gives us -- assuming they file it
24 Friday, that gives us the weekend plus the next week.

14:55:30 25 I think all the lawyers in the room are working as

14:55:32 1 fast as they can on this. I don't have any reason to
2 suggest --

3 THE COURT: That's fine. What I would like to do,
4 then, is set a hearing on this motion for Friday, October
14:55:58 5 17th. So a week after the reply brief comes in.

6 We've got an investiture that afternoon --

7 THE COURTROOM DEPUTY: At 3 o'clock.

8 THE COURT: Let's say 1:30 on Friday the 17th. Does
9 that work for folks?

14:56:26 10 MS. BROOK: Yes, Your Honor.

11 MR. CABOU: That's fine with the defense as well,
12 Your Honor. Thank you.

13 THE COURT: Okay.

14 My intent would be to rule on the motion at the
14:56:40 15 hearing if I can. If I think I need to write, we'll get a
16 decision out within a week after the hearing. So we'll not
17 sit on this issue long.

18 And then if I'm ordering the government to disclose
19 things that are classified, we'll need to get into CIPA and
14:56:56 20 talk about the procedures to be followed under CIPA. But it
21 seems to me this is the right first step to take before we get
22 into CIPA technicalities.

23 What is the government's intention with respect to
24 unsealing this case?

14:57:18 25 MS. BROOK: Your Honor, the government does

14:57:19 1 anticipate filing a motion with the Court shortly to unseal
2 the indictment which, as Your Honor knows, is currently
3 sealed.

4 THE COURT: What are the factors that I consider in
14:57:29 5 deciding whether or not to unseal this case?

6 MS. BROOK: The indictment was sealed originally to
7 effectuate the arrest. It was then continued in the sense we
8 didn't file our motion to unseal and basically, as a courtesy
9 to defense counsel, as we were attempting to negotiate a
14:57:46 10 resolution. But with that said, at this juncture we've
11 notified defense counsel we intend to file a motion with Your
12 Honor to unseal.

13 THE COURT: All right. What's the defense going --
14 what is your response going to be when that motion is filed?

14:58:01 15 MR. CABOU: We were notified as we came into court
16 the government intends to unseal. Frankly, we would like a
17 chance to convince the Court not to do that. There are
18 massive collateral consequences that flow from this becoming
19 public and we'd like a chance for at least a day or two to
14:58:20 20 look at it.

21 THE COURT: Let's then have you brief it, file the
22 motion, but let's get it briefed before this hearing on the
23 17th so that we can take up that issue then. I think I want
24 to address it at the same time.

14:58:37 25 MR. CABOU: Yes, Your Honor. That would be no

14:58:38 1 problem. So do we --

2 THE COURT: The government will file a motion to
3 unseal, you'll respond and reply. We've got enough time,
4 because you don't have to exchange letters first, to get that
14:58:47 5 briefing done by the 17th.

6 MR. CABOU: Yes, Judge. So do we anticipate the
7 government filing that motion and just following the ordinary
8 deadlines that will ultimately bring us to the hearing on the
9 17th?

14:58:57 10 THE COURT: Yeah. You can talk and figure out what
11 works in your schedules, but I would just like to get it
12 briefed by then.

13 MR. CABOU: Thank you, Judge.

14 MS. BROOK: Okay.

14:59:06 15 THE COURT: All right. In light of these
16 developments, the trial date now is September 9th. The motion
17 to continue you filed, Mr. Cabou, would be for 30 days, which
18 would take us to a point before this briefing is done. What
19 do you want to do in light of that?

14:59:26 20 MR. CABOU: Your Honor, could I have the Court's
21 indulgence for a second to confer with counsel?

22 THE COURT: Yeah, that's fine.

23 (Counsel confer.)

24 MR. CABOU: Your Honor, Ms. Brook and I were
14:59:57 25 discussing whether it made sense to have the case declared

15:00:00 1 complex at this point and then just set a scheduling order
2 down the road or whether it's more efficient to just set a
3 trial date. We're open to suggestions on that. Our goal is
4 to proceed to trial as quickly as possible with the
15:00:10 5 information we need and on a schedule that allows the parties
6 to brief the very unique issues that are likely to come up
7 kind of as we get closer to trial on a number of different
8 issues. So I guess I'm open to suggestions from the Court.

9 THE COURT: Well, let me suggest this: What I
15:00:24 10 suggest we do is set the trial for November 4th. That is the
11 date on which I'm setting my November trials, because I
12 usually do it the second Tuesday of the month but that's a
13 federal holiday in November.

14 What that would normally call for would be a status
15:00:39 15 hearing three weeks before to talk about where the case is.
16 We can just do that on the 17th when we're together in
17 October.

18 So what I would also suggest is that you all confer
19 about what other steps need to be completed for trial to go,
15:00:56 20 assuming it isn't delayed by the CIPA matters. It may. But
21 what other work needs to be done? And jointly file before the
22 17th a joint proposed schedule for, you know, 404(b) expert
23 disclosures, anything else that we need to take care of before
24 trial. If you can't agree, you can tell me your competing
15:01:18 25 views, and when we get together on the 17th we can at least --

1 I know that will be before we've resolved all of the
2 classified information issues, but at least we can scope out
3 to some degree where we ought to be looking for a firm trial
4 date.

5 MR. CABOU: Your Honor, if having a date on the
6 calendar for the 4th is expeditious is for the Court's
7 calendar, that's fine with us. I just wanted to raise a
8 possible question. To the extent -- the ruling on the CIPA
9 issues will undoubtedly affect our trial strategy --

10 THE COURT: The trial will not go on November 4th.
11 It will be -- I mean, I've got to have a trial setting under
12 Speedy Trial Act. It becomes a place holder so that we can
13 talk about it on the 17th and we don't run into speedy trial
14 problems beforehand. But I'll do it with the understanding
15 that I'm not going to surprise you and tell you on the 17th
16 you've got to be ready for trial in three weeks.

17 MR. CABOU: Appreciate that, Your Honor. My only
18 minor moment of panic was about when the pretrial motion
19 deadline would be.

20 THE COURT: I would ask you, then, in your schedule
21 that you jointly submit before the 17th to address things like
22 pretrial motions, experts, 404(b) notifications. I don't know
23 if there's confidential informants or anything like that that
24 need to be disclosed, but anything else that you would
25 normally put in a scheduling order for a complex case address,

15:02:36 1 and we'll take that up on the 17th as well.

2 So what that means is, and I'm assuming this is with
3 the defense's consent, I'll grant the motion to continue but
4 I'll make it 60 days instead of 30 days.

15:02:49 5 MR. CABOU: Thank you, Your Honor. We certainly
6 consent.

7 THE COURT: Okay. So we'll exclude time between now
8 and November 4th. Do you agree, Mr. Cabou?

9 MR. CABOU: Yes, Your Honor.

15:02:58 10 THE COURT: All right.

11 I think that covers everything I wanted to raise.

12 Ms. Brook, do you have matters you'd like to raise?

13 MS. BROOK: Your Honor, just one clarifying point for
14 the record, for the Court. The government has at this point
15 disclosed over 7,000 pages of information, including audio
16 recordings, et cetera. There are still a few documents that
17 will go out in short order, in the next week or so, to include
18 some affidavits which we're awaiting orders to unseal to
19 disclose to defense. So I just wanted to let the Court know
15:03:34 20 that everything is diligently going out and should be in the
21 hands of the defense very shortly.

22 And additionally, the government does and will be
23 making in writing as well requests for reciprocal discovery.

24 Thank you.

15:03:50 25 THE COURT: Mr. Cabou, do you have other matters you

15:03:52 1 want to raise?

2 MR. CABOU: Not that I know of, Your Honor. I think
3 we're good from the defense side. Thank you for your time.

4 THE COURT: Okay. Let me mention one other thing.

15:04:00 5 In this joint proposed schedule you submit before the
6 17th, please also address whether this should be designated a
7 complex case for purposes of the Speedy Trial Act. That's
8 something that I'd rather have in writing since that affects
9 speedy trial time. Also talk about whether you think it needs
15:04:21 10 a complex case designation or not. That really won't affect
11 the kind of schedule I set. I'm going to set a schedule that
12 will get us to trial as soon as possible with what needs to be
13 done, but that does simplify the Speedy Trial Act calculations
14 if we designate it complex.

15:04:35 15 Okay. We will reflect the things we've talked about
16 today in the minute entry that comes out, and we'll look
17 forward to seeing you on the 17th.

18 MR. CABOU: Thank you for your time, Your Honor.

19 MS. BROOK: Thank you, Your Honor.

15:04:48 20 (End of transcript.)

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C E R T I F I C A T E

I, PATRICIA LYONS, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control, and to the best of my ability.

DATED at Phoenix, Arizona, this 15th day of September, 2014.

s/ Patricia Lyons, RMR, CRR
Official Court Reporter